

1 Defendant FleetBoston is a foreign corporation having withdrawn from doing
2 business in this State pursuant to O.C.G.A. § 14-2-1520(b). After proper service of
3 process of the Summons and Complaint on December 10th, 2004 on the Defendant
4 by a Court Appointed Process Server, the Defendant failed to file its answer to the
Summons and Complaint and became in default on January 11th, 2005.

5 The Court finds that fifteen (15) days having elapsed from the date of this
6 default and the default not having been opened as a matter of right or by an order of
7 this Court and hence the Plaintiffs are clearly entitled to a judgment by default
8 against the Defendant as a matter of law. The Plaintiffs has submitted to the Court
9 their joint Motion for Default Judgment and Summary Judgment on the issue of
10 damages with stipulations filed by the parties Plaintiffs. The Court finds that there are
11 no just reasons for delay of the entry of this final judgment and therefore enters final
judgment for the Plaintiffs as to all claims pursuant to O.C.G.A. § 9-11-54(b).

12 **II. DISCUSSION**

13 There is no dispute that Defendant FleetBoston is a foreign corporation
14 withdrawn from doing business in this State pursuant to O.C.G.A. § 14-2-1520(b).
15 See, (Plaintiffs' Complaint Exhibit "A") and that proper service of process was made
16 on the Defendant by a Court Appointed Process Server by serving the Georgia
17 Secretary of State pursuant to O.C.G.A. § 14-2-1520(c). See, Return of Service at
18 Docket No. E4. Defendant failed to file its answer to the Summons and Complaint
19 and became in default on January 11th, 2005. The Plaintiffs having filed their joint
20 Motion for Default and Summary Judgment on the issue of Damages, such motion
can be heard by the Court. Therefore, the Court holds that since Defendant is in
default liability is establish by the operation of law. See, O.C.G.A. § 9-11-55(a).

21 **III. HEARING ON THE ISSUE OF DAMAGES**

22 The only issue that remain in this civil action are the issue of damages. With
23 the consent of the Plaintiffs, the Court will entertain their joint Motion for Default
24 Judgment and Summary Judgment on the issue of damages. Defendant has legally
25 waived all further notices in this action pursuant to O.C.G.A. § 9-11-5(a). Defendant
is not entitled to any notice of the final hearing on the Plaintiffs' joint motion.

1 There has been a long line of cases rendered by our Georgia Supreme Court
 2 which holds that the failure of a Defendant to file pleadings in an action is deemed a
 3 waiver by that Defendant of all further notices to that Defendant in the civil action.
 4 This includes all notices of time and place of trial and the issuing of any final decree
 5 in the action. See, Lucas v. Lucas, 273 Ga. 240, 539 SE2d 807 (2000); Harris v.
 6 Harris, 258 Ga. 496, 371 SE2d 399 (1988); Hardwick v. Hardwick, 245 Ga. 570,
 266 SE2d 184 (1980); Brooks v. Brooks, 242 Ga. 444, 249 SE2d 244 (1978).

7 Thus, this waiver of further notices of a hearing and the time and place of trial
 8 provided by O.C.G.A. § 9-11-5(a) would control over any conflicting Court Rules.
 See, Hulsey Pool Co. v. Troutman, 167 Ga. App. 192, 306 SE2d 83 (1983).

9 Therefore, the Court holds that Defendant in this action has waived all notices
 10 of the entry of this final judgment as a matter of law and that the Court will turn its
 11 attention to the Plaintiffs' Motion for Default Judgment, Summary Judgment on the
 12 issue of damages and the record in this civil proceeding.

13 (a) DEFENDANT FLEETBOSTION'S ADMISSIONS

14 When the Plaintiffs served the Defendant with their Complaint for Damages
 15 they also served the Defendant with a copy of "Plaintiffs' Request for Admissions."
 16 See, Docket No. E4. Defendant also failed to answer the Plaintiffs' request for
 17 admissions in this action. See, Docket No. E3. Under O.C.G.A. § 9-11-36(a) all
 18 matters which are not denied or objected to by a Defendant shall be deemed
 19 admitted if not denied by a Defendant within the time permitted for answering a
 20 request for admissions. Because Defendant FleetBostion did not answer, object or
 deny the Plaintiffs' request for admissions, the Court holds that the Defendant
 FleetBostion made the following judicial admissions to wit:

21 "2. The Defendant FLEETBOSTION FINANCIAL
 22 CORP., admits that it has committed all acts stated in the
 Plaintiffs' Complaint and that all exhibits attached thereto are
 also admitted as true."

23 "4. The Defendant FLEETBOSTION FINANCIAL
 24 CORP., admits to the Court or the Jury that the Plaintiffs are
 25 entitled to statutory property damages in the Complaint not
~~less than the amount of \$75,507,000.00~~ [Seventy-five Million

1 “(b) Effect of admission. Any matter admitted
2 under this Code Section is conclusively established
3 unless the court, on motion, permits withdrawal or
4 amendment of the admission.”

5 (b) TRIAL COURT'S DISCRETION

6 This Court will only have discretion under O.C.G.A. § 9-11-36(b) when a party
7 moves to determine the sufficiency of the answers or objections filed in response to a
8 request for admissions. See, Mountain View Enters, Inc. v. Diversified Systems,
9 133 Ga. App. 249, 211 SE2d 186 (1974). Defendant should have moved to amend
10 or withdraw its admissions in order for this Court to use its discretion. However,
11 without such a timely motion made by the Defendant FleetBoston to withdraw or
12 amend its admissions this Court as a matter of law is without discretion, authority or
13 jurisdiction to set aside or amend Defendant's admissions on its own motion.

14 (c) GEORGIA'S SUPREME COURT RULE ON ADMISSION

15 This Court is also bound by the holding made by our Georgia Supreme Court
16 in G.H. Bass & Co. v. Fulton County Bd. Of Tax Assessors, 268 Ga. 327, 486
17 SE2d 810 (1997) holding that a Defendant's un-withdrawn admissions are deemed
18 admitted when not denied. The Georgia Supreme Court held in part that:

19 “The [Defendant] did not move the trial court to
20 allow the withdrawal or amendment of its admissions
21 either before or after [the Plaintiffs] raised the legal
22 effect of the [Defendant's] failure to respond to its
23 requests and did not offer any justification for its failure
24 to respond which would have authorized the trial court
25 to exercise its discretion under O.C.G.A. § 9-11-36(b) to
26 relieve the [Defendant] from the consequence of its
27 admissions. Because the [Defendant] did not avail itself
28 of any of the variety of the responses available under
29 O.C.G.A. § 9-11-36 and chose not to seek the liberal
30 remedies afforded to parties under the statute to avoid
31 the consequences of a failure to respond, we hold that
32 the subject matter of [Plaintiffs'] requests for admission
33 stood admitted.”

34 “The language in O.C.G.A. § 9-11-36(a) is clear,
35 unambiguous, and unequivocal and means just what it
36 says. One must comply strictly and literally with the

1 terms of the statute upon the peril of having his
2 response construed to be an admission."

3 "While we recognize that the result on the
4 [Defendant] may be criticized as harsh or draconian, our
5 holding benefits both bench and bar in that it promotes
6 constancy and stability in the law by clarifying that the
7 plain language of a civil practice statute will be applied
8 consistently to all parties; hence, all practitioners will be
9 able to govern their behavior accordingly."

7 "Because the admissions were not withdrawn or
8 amended, the Court of Appeals erred by holding that the
9 [Defendant's] failure to respond was a matter of no
10 consequence."

10 "Judgment reversed."

11 With emphases supplied and citations omitted. Thus our Georgia Court of
12 Appeals has echoed the Georgia Supreme Court holding in its opinions in Mays v.
13 Ed Voyles Chrysler-Plymouth, Inc., 255 Ga. App. 357, 565 SE2d 515 (2002);
14 Solis v. Lamb, 244 Ga. App. 8, 534 SE2d 582 (2000). The Georgia Court of
15 Appeals has ruled in Mays v. Ed Voyles Chrysler-Plymouth, Inc., Supra, that:

16 "A matter admitted in response to requests for
17 admission under O.C.G.A. § 9-11-36 is conclusively
18 established unless the court, on motion, permits
19 withdrawal or amendment of the admission.... Such a
20 solemn admission in judicio is conclusive as a matter of
21 law on the matter stated and cannot be contradicted by
22 other evidence unless it is withdrawn or amended on
23 formal motion."

24 Because this Court has already found that the Defendant has admitted that the
25 Plaintiffs are entitled to not less than \$75,507,000.00 in property damages,
\$95,000,000.00 in punitive damages and pre judgment interest from June 4th, 1994
until the date final judgment is entered in this civil action.

The Court holds that there are no genuine issue as to any material fact
concerning the amount of damages and that the Plaintiffs are entitled to Summary
Judgment on the issue of damages as a matter of law. See, Mays v. Ed Voyles
Chrysler-Plymouth, Inc., 255 Ga. App. 357, 565 SE2d 515 (2002).

IV. CONCLUSIONS OF LAW

The Court conclude that the Plaintiffs made proper service of process on Defendant FleetBoston Financial Corporation with the Summons, Complaint and Request for Admissions by serving the Georgia Secretary of State pursuant to O.C.G.A. § 14-2-1520(c) the law of this State. See, Docket No. E3.

The Court further conclude that the Defendant is in default as a matter of law and that Defendant FleetBoston has legally waived all further notices in this action pursuant to O.C.G.A. § 9-11-5(a). This also includes notice of time and place of trial and the issuing of any final judgment and decree in this civil action.

The Court further conclude that the admissions made by the Defendant FleetBoston Financial Corporation as to the amount of damages are deemed judicial admissions and cannot be overlooked by this Court and is therefore binding on this Court. See, O.C.G.A. § 9-11-36(b). Because of Defendant's solemn admissions in judicio are binding, they are conclusive on the issue of damages and cannot be contradicted by other evidence unless it is withdrawn or amended on formal motion.

Therefore, the Plaintiffs are entitled to relief sought and that this Court has jurisdiction to grant the Plaintiffs' request for relief concerning their joint Motion for Default Judgment and Summary Judgment on the issue of damages in this civil action. See, Georgia Constitution, Article VI Section IV Paragraph I, O.C.G.A. § 9-11-55(a) and O.C.G.A. § 9-11-56(a).

Therefore, it is hereby:

ORDERED, ADJUDGED, AND DECREED, That final judgment is entered in favor of the Plaintiffs Tony L. Ware, CEO and T.L. Ware Bottling Company, Inc., against the Defendant FleetBoston Financial Corporation in the amount of \$75,507,000.00 in property damages which damages are tripled pursuant to O.C.G.A. § 16-14-6(c) the (Georgia RICO Act) and 18 U.S.C. § 1964(c) the (Federal RICO Act) resulting in a total amount of **\$226,521,000.00** in favor of the Plaintiffs against Defendant FleetBoston Financial Corporation.

IT IS FURTHER ORDERED, That the Plaintiffs shall have punitive damages against the Defendant for its illegal actions, frauds, willful misconduct,

1 wanton, illegal thefts and RICO violations in the amount of \$95,000,000.00 in punitive
 2 damages which damages are tripled pursuant to O.C.G.A. § 16-14-6(c) the Georgia
 3 RICO Act and 18 U.S.C. § 1964(c) the Federal RICO Act resulting in a total amount
 4 of **\$285,000,000.00** in favor of the Plaintiffs against Defendant FleetBoston.

5 **IT IS FURTHER ORDERED,** That the Plaintiffs shall have pre judgment
 6 interest against the Defendant FleetBoston Financial Corporation concerning the
 7 Plaintiffs' property damage claims from June 4th, 1994 upon entry of this judgment in
 8 the amount of **\$410,746,265.24** pursuant to O.C.G.A. § 51-12-14(c). See, Affidavit
 9 at Docket No. E6. Thus, the Plaintiffs shall have a total final judgment against
 10 Defendant FleetBoston Financial Corporation in the principle amount of
 11 **\$511,521,000.00** and pre judgment interest in the amount of **\$410,746,265.24**.

12 **IT IS FURTHER ORDERED,** That the Defendant shall pay any and all post
 13 judgment interest that accrues on this final judgment after the entry of this final
 14 judgment pursuant to O.C.G.A. § 7-4-12.

15 **IT IS FURTHER ORDERED,** That the Clerk of this Court shall issue a Writ
 16 of Execution (Fi Fa) in the principle amount of **\$511,521,000.00** with interest in the
 17 amount of **\$410,746,265.24** and the Court cost of this action. Upon the Clerk
 18 issuing the Writ of Execution (Fi Fa), Defendant FleetBoston Financial Corporation
 19 formerly known as BankBoston Corporation shall immediately pay and satisfy the
 20 final judgment of this Court as stated in such Writ of Execution (Fi Fa) and upon
 21 Defendant receiving a certified copy of this final judgment and the Writ of Execution.

22 **IT IS FURTHER ORDERED,** By this Court that unless the Defendant show
 23 good cause to this Court why it cannot pay or satisfy the final judgment of this Court
 24 with pre judgment interest, or if the Defendant fails or refuses to make payment of the
 25 final judgment including pre judgment interest to the Plaintiffs within 7 days upon
 receipt of a copy this order; then the Court hereby adjudges the Defendant in civil
 contempt of this Court. See, Griggers v. Bryant, 239 Ga. 244, 236 SE2d 599
 (1977); Wagner v. Commercial, Inc., 203 Ga. 1, 45 SE2d 205 (1945).

1 **IT IS FURTHER ORDERED,** By this Court that the Defendant shall be
 2 subject to pay the Plaintiff in addition to the final judgment and post judgment
 3 interest, a civil penalty of **\$25,000.00** per day until the Defendant purges itself of such
 4 contempt by complying with the terms of this final judgment. See, In re Harvy, 219
 5 Ga. App. 76, 464 SE2d 34 (1995). This civil penalty will only apply if the Defendant
 6 fails to comply with the terms of this order within (7) days upon receiving notice of this
 7 order by the Court or by the Plaintiffs. The Defendant, its subsidiaries that are
 8 operating in this State, their officers and agents will be subject to further civil and
 9 criminal penalties and a writ of injunction that will enjoin them from operating in this
 10 State until Defendant has complied with the terms of this final judgment.

11 **IT IS FURTHER ORDERED,** That the Sheriffs of this State and their lawful
 12 Deputies are hereby ordered to take all actions needed to seize all monies, property
 13 and assets which is not exempt by law held by any persons, corporations,
 14 partnerships, banks or holding companies held on behalf of the Defendant or that is
 15 in the possession of the Defendant located within the jurisdiction of this State.

16 **IT IS FURTHER ORDERED,** By this Court that the Defendant shall post
 17 supersede bonds in the amount of **\$511,521,000.00** representing the principal and
 18 **\$410,746,265.24** representing the pre judgment interest before the Defendant can
 19 file any pleadings, motions or appeals in this action. The Clerk of this Court is hereby
 20 directed not to file any motions, appeal or any other documents into this Court on
 21 behalf of the Defendant except an affidavit by the Defendant's CEO explaining why
 22 the Defendant cannot post the supersede bonds stated in this decree. Nor shall the
 23 Clerk of this Court set any hearings on any other matter before any other Judge of
 24 this Court until said Defendant has posted a total of **\$922,267,265.24** in supersede
 25 bonds with the Clerk of this Court.

26 **IT IS FURTHER ORDERED,** By this Court that the Clerk of this Court is
 also directed to served a certified copy of the Writ of Execution (Fi Fa) and this final
 judgment entered on the Defendant FleetBoston Financial Corporation by U.S.
 Certified Mail pursuant to O.C.G.A. § 14-2-1520(c) addressed to:

1 **M. A. FERRUCCI, President & CEO**
2 **FLEETBOSTON FINANCIAL CORPORATION**
3 c/o Cathy Cox, Secretary of State
 2 Martin Luther King Jr., Drive, Suite 315
 Atlanta, Georgia 30334-1530

4 **IT IS FURTHER ORDERED,** By this Court that the Plaintiffs shall also be
5 authorized to prefect service of a copy of this final judgment and the Writ of Execution
6 (Fi Fa) on the Defendant FleetBoston Financial Corporation f/k/a BankBoston
7 Corporation by U.S. Certified Mail at any of the other addresses of the Defendant
8 listed in the office of the North Carolina's Secretary of State. Any service made by
9 the Clerk of this Court or the Plaintiffs in this action pursuant to this order shall be
deemed perfected on the Defendant pursuant to **O.C.G.A. § 14-2-1520(c)**.

10 **V. BILL OF PEACE AND INJUNCTION**

11 **IT IS HEREBY ORDERED,** By this Court that the Defendant, its officers,
12 agents, its servants, its assigns and its successors (such as Bank of America) or any
13 other person, corporation, insurance company, bank or partnership acting under the
14 authority of the Defendant FleetBoston Financial Corporation are hereby permanently
enjoined and restrained from the following:

15 (a) The Defendant is hereby permanently enjoined and
16 restrained from assisting or aid and aiding its subsidiaries, its
17 officers, agents and servants in performing any illegal acts averred
18 by the Plaintiffs and deemed by the Court to be illegal and a fraud
against the Plaintiffs and other consumers in the State of Georgia;

19 (b) The Defendant is hereby permanently enjoined and
20 restrained from operating in this State without a Certificate of
21 Authority from the Georgia Secretary of State;

22 (c) The Defendant, its officers, agents and its attorneys are
23 permanently enjoined and restrained committing any further torts
against the Plaintiffs as stated in their Complaint;

24 (d) The Defendant, its officers, agents and its attorneys are
25 ~~hereby permanently enjoined and restrained from filing any~~

1 motions, pleadings or appeals for the purpose of delaying any rights
 2 adjudicated by this Court in favor of the Plaintiffs in this civil action.
 3 Nor shall the Defendant or its attorneys acting on behalf of the
 4 Defendant file any motions, pleadings or appeals for the purpose of
 harassing the Plaintiffs of any rights adjudicated by the Court and

5 (e) Defendant its officers, agents and its attorneys are
 6 hereby permanently enjoined and restrained from harassing the
 7 Plaintiffs in any discovery or post judgment discovery matters by
 8 asking questions in a matter which is deemed irrelevant to the case
 9 so adjudicated by this Court or that such questions has no legal
 10 value to the Plaintiffs' claims at issue. Nor shall Defendant's
 11 attorneys file any motions or pleadings in any other Court having
 12 jurisdiction on matters already admitted to by the Defendant and
 matters adjudicated by this Court in this civil action.

13 **VI. ENFORCEMENT PROVISIONS OF FINAL JUDGMENT**

14 **IT IS FURTHER ORDERED,** By this Court that it shall be the duty of the
 15 Sheriffs of this State located within their legal jurisdiction where all provisions of this
 16 final judgment can be enforced against the Defendant FleetBoston and that said
 17 officer or officers shall take all actions and proper steps needed when requested to
 do so by the Plaintiffs in enforcing this final judgment by performing the following:

- 18 a. Arrest anyone who may resisting or interfering with the
 19 enforcement of this final judgment in the present of such
 officer(s) as legal contempt of this Court;
- 20 b. Make any Police report and document all claims in such
 21 report when requested by the Plaintiffs or their authorized
 agents concerning any violations of the laws of this State;
- 22 c. Take possession of Defendant's assets which may be in the
 23 legal possession of any banks, holding company,
 corporation, partnership or insurance company and;
- 24 d. Perform any other act which may ad in the enforcement of
 25 ~~this final judgment provided however that such act may not~~
 conflict with the laws of this State.

1 **IT IS FURTHER ORDERED,** That when assistance is requested by the
2 Plaintiffs for the enforcement of any provisions of this final judgment said officer or
3 officers shall assist the Plaintiffs and enforce the provisions of this final judgment.

4 **IT IS FURTHER ORDERED,** That the Plaintiffs has consented to the total
5 payment and satisfaction of this judgment to be made payable to the Plaintiff T.L.
6 Ware Bottling Company, Inc., by the Defendant. Furthermore, this consent final
7 judgment shall not be amended, modified or set aside by the parties or the Court
8 without the consent of the parties Plaintiffs or without a notice of a hearing to the
9 Plaintiffs by the Clerk of this Court at the Plaintiffs' address of record in this action.


10 **IT IS FURTHER ORDERED,** That this final judgment shall be a standing
11 order of this Court in the above-styled civil matter and is entered as final judgment
12 pursuant to O.C.G.A. § 9-11-54(b) unless reversed, modified or set aside by any of
13 the appellate Courts in this State.

14 **IT IS SO ORDERED, This** 28th **day of** JAN, 2005.


15 
16 **Hon. M. GINO BRAGGDON, Presiding Judge**
17 **SUPERIOR COURT OF FULTON COUNTY**

18 **IT IS HEREBY AGREED TO BY THE PARTIES,**

19 **Agreed and Consented to By:**

20 
21 **Michael R. Johnson, Sr.**
22 **Attorney for the Plaintiff**
23 **Georgia Bar No. 395056**
24 **Johnson & Associates, P. C.**
340 West Peachtree Street, N.E.
Suite 200
Atlanta, Georgia 30308
(404) 688-7100

Agreed and Consented to By:


Dr. Tony L. Ware, JD, Plaintiff
Chairman & CEO
P.O. Box 150524-Dept. 0227
Atlanta, Georgia 30315-0188
(404) 945-0342

PLAINTIFFS'

EXHIBIT

“E”

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

**TONY L. WARE, CEO, and
T.L. WARE BOTTLING CO., INC.,**

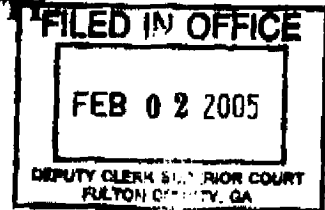
Plaintiff,

Va.

**Civil Action 2004 CV 94553
Judge Bensonetta Tipton Lane**

**FLEETBOSTON FINANCIAL CORP.,
f/k/a BANKBOSTON CORP.,**

Defendant.



ORDER VACATING JUDGMENT AND SETTING HEARING

The Final Judgment and Decree entered January 28, 2005, by the Presiding Judge is hereby **VACATED**. The Court will hear argument regarding the plaintiff's motion for default judgment and the scope of any appropriate relief on **Wednesday, February 16, 2005 at 10:00 A.M.** in Courtroom 1-D, 185 Central Avenue SW, Atlanta, GA 30303. This hearing is specially set. No continuances will be granted except upon written motion and for legal cause.

SO ORDERED, this 2 day of February, 2005.


BENSONETTA TIPTON LANE, JUDGE
Fulton Superior Court
Atlanta Judicial Circuit

Please serve:

**Mr. Michael Robert Johnson
Johnson & Associates, P.C.
340 W. Peachtree Street, Suite 200
Atlanta, GA 30308-3517
Phone: 404-688-7100
Fax: 404-230-2858**

**Dr. Tony L. Ware
P.O. Box 150524-Dept. 0227**

PLAINTIFFS'

EXHIBIT

“F”

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

**TONY L. WARE, CEO and
T. L. WARE BOTTLING CO., INC.,**

Plaintiffs,

vs.

**FLEETBOSTON FINANCIAL CORP.
F/K/A BANKBOSTON CORP.,**

Defendant.

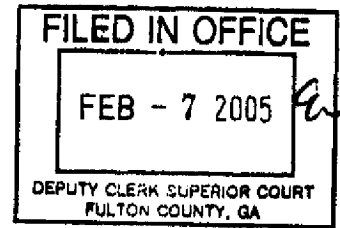
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CIVIL ACTION

FILE NUMBER: 2004CV94553

ORDER ON MOTION

PRESIDING JUDGE BAXTER



ORDER

The Plaintiffs in this civil matter having come before this Court for a hearing on their Motion to Set Aside an Order pursuant to **O.C.G.A. § 9-11-60(a) and (d)(1)** with their consent in this action. Based upon the record in this action, the evidence presented to the Court by the parties and applicable State law the Court finds that as a matter of law sufficient grounds exist for the granting thereof. The Court hereby GRANT the Plaintiffs' joint Motion to Set Aside this Court's Order entered on February 2nd, 2005 vacating this Court's final judgment on January 28th, 2005 as follows:

I. FINDINGS OF FACT

The Court makes the following findings of fact:

The Plaintiffs Tony L. Ware, CEO and T.L. Ware Bottling Company, Inc., brought this civil action on December 7th, 2004 based upon their ten count Complaint for Damages, Injunction, RICO violations, Fraud, Gross Negligence and other violations of both Federal and State laws and further requesting injunctive and other equitable relief concerning all other claims and disputes against the Defendant FleetBoston Financial Corporation f/k/a/ BankBoston Corporation.

After proper service of process of the Summons and Complaint on the Defendant on December 10th, 2004 by a Court Appointed Process Server, the Defendant failed to file its answer to the Summons and Complaint and became in default on January 11th, 2005.

On January 28th, 2005 this Court entered a Final Judgment and Decree in favor of the Plaintiffs. See, Docket No. 10. Before any party could appeal such final judgment this Court entered a order vacating said final judgment on its own motion without a showing of any meritorious reason. See, Docket No. 11.

Contrary to the final judgment of this Court the Order vacating the final judgment did not state whether or not said final judgment was void or whether there were any nonamendable defects which may appear on the face of the record. The Court further finds that the final judgment entered in this action was not void for lack of jurisdiction over the parties or the subject matter in this case. Nor are there any nonamendable defects which would authorized this Court to set aside or vacate the final judgment entered by this Court.

Thus the final judgment entered on January 28th, 2005 limited this Court's own inherent power and jurisdiction to amend, modify or set aside the final judgment as it relates to this case without first giving the Plaintiffs a notice of a hearing and a right to be heard by the Court prior to vacating and setting aside the final judgment of this Court. See, Docket No. 10 Final Judgment at Page 12.

Therefore this Court finds that as a matter of law, there are no meritorious reasons to vacate the final judgment entered on January 28th, 2005 and the Order vacating such final judgment is void on its face for lack of jurisdiction.

II. DISCUSSION

Notwithstanding this Court's inherent authority over judgments within the same term of Court the final judgment entered in this action was rendered in chambers pursuant to **O.C.G.A. § 9-11-55(a)**. This Court never exercised any legal discretion to vacate its final judgment nor did the Court give the Plaintiffs any meritorious reasons for vacating the final judgment. See, Docket No. 11 Order vacating judgment. Our Georgia Supreme Court has made it clear in **Pope v. Pope**, 277 Ga. 333, 588 SE2d 736 (2003) by stating the following:

"A trial court's discretion in setting aside a judgment will not be disturbed unless manifestly abused. However, trial Court's discretion to set aside a judgment during the term it was entered is not without limits, and should be exercised for some meritorious reason."

Thus the Order attempting to vacate the final judgment in this manner did not show that the Court exercised any legal discretion by showing a meritorious reason. The Georgia Supreme Court has also held in Hurt Bldg., Inc. v. Atlanta Trust Co., 181 Ga. 274, 182 SE 187 (1935) that:

"While a motion to set aside a judgment a judgment is addressed to the sound discretion of the judge, it should not, although made during the term at which the judgment was rendered, be granted unless some meritorious reason is given thereof. The rule appears to have been generally adopted in almost all jurisdictions, that the power of control even during the term should be exercised only upon sufficient cause shown, and where the matter appeals to an exercise of sound legal discretion."

As stated herein the final judgment entered on January 28th, 2005 limited this Court's own power and jurisdiction to amend, modify or set aside the final judgment by first giving the Plaintiffs the right to a notice of a hearing and a right to be heard prior to the Court vacating or setting aside the final judgment of this Court. See, Docket No. 10 Final Judgment at Page 12 which reads in part that:

"IT IS FURTHER ORDERED, That the Plaintiffs has consented to the total payment and satisfaction of this judgment to be made payable to the Plaintiff T.L. Ware Bottling Company, Inc., by the Defendant. Furthermore, this consent final judgment shall not be amended, modified or set aside by the parties or the Court without the consent of the parties Plaintiffs or without a notice of a hearing to the Plaintiffs by the Clerk of this Court at the Plaintiffs' address of record in this action."

III. CONCLUSION OF LAW

This provision of the final judgment was binding on this Court. Therefore, the Court concludes that there are no meritorious reasons to vacate the final judgment entered on January 28th, 2005 and the Order vacating such final judgment without notice to the Plaintiffs and without their consent pursuant to the above stated provision of the final judgment is deemed void on its face for lack of jurisdiction. The Georgia Supreme Court has further held that:

"A void judgment is no judgment. By it no rights are divested; from it no rights can be obtained. Being worthless in itself, all proceeding founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it and all claims flowing out of it are void."

See, Steward vs. Golden, 98 Ga. 479, 25 SE 538 (1896) and also see Shotgun vs. State, 73 Ga. App. 136, 35 SE2d 556 (1945) cert. denied, 329 U.S. 740, 67 S.Ct. 56, 91 L.Ed 638 (1946). See, O.C.G.A. § 9-11-60(a) and O.C.G.A. § 9-12-16. The Georgia Supreme Court has made it clear by stating:

"When a party has been afforded an opportunity to be heard, the court cannot suspend or vacate its judgment merely to let in a defense which should have been offered before the judgment was entered."

See, Hurt Bldg., Inc. v. Atlanta Trust Co., Supra. This Court further concludes that the Order vacating the final judgment without having a meritorious reason and without notice to the Plaintiffs prior to vacating the final judgment violates the Plaintiffs Federal Constitutional rights to due process under law.

ORDERED, ADJUDGED, AND DECREED, That the Order vacating the final judgment entered on February 2nd, 2005 is hereby set aside and vacated and said order is deemed null and void on its face for lack of jurisdiction and because of a nonamendable defect which appears on the face of the record such as lack of notice of a hearing to the Plaintiffs concerning the Court's own motion to vacate the final judgment without having a meritorious reason.

IT IS FURTHER ORDERED, By this Court that the final judgment entered on January 28th, 2005 by the Honorable M. Gino Brogdon is effective and binding on this Court and all parties and is therefore the law of this case.

IT IS FURTHER ORDERED, By this Court that the Defendant and the Clerk of this Court is further directed to comply with all of the terms of the final judgment entered on January 28th, 2005 by the Honorable M. Gino Brogdon, Presiding Judge and that any further orders or judgments (except any orders of the Georgia Supreme Court or the Georgia Court of Appeals) which is entered in violation of the final judgment shall be deemed null and void as a matter of law.

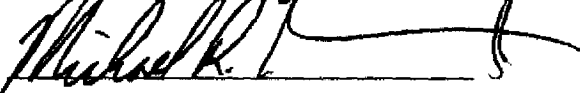
IT IS FURTHER ORDERED, By this Court that this order shall be made part of the final judgment of this Court and shall not be vacated or set aside by the Court without prior notice of a hearing to the Plaintiffs. The Plaintiffs shall have a right to file a motion for contempt for any persons violating this Order and the final judgment entered on January 28th, 2005 by this Court.

IT IS SO ORDERED, This 7 **day of** Feb **, 2005.**


Hon. JERRY W. BAXTER, Presiding Judge
SUPERIOR COURT OF FULTON COUNTY

IT IS HEREBY CONSENTED TO BY THE PARTIES,

Consented to By:



Michael R. Johnson, Sr.
Attorney for the Plaintiff
Georgia Bar No. 395056
Johnson & Associates, P. C.
340 West Peachtree Street, N.E.
Suite 200
Atlanta, Georgia 30308
(404) 688-7100

Consented to By:



Dr. Tony L. Ware, JD, Plaintiff
Chairman & CEO
P.O. Box 150524-Dept. 0227
Atlanta, Georgia 30315-0188
(404) 945-0342

PLAINTIFFS'

EXHIBIT

“G”

FILED IN OFFICE
FEB - 8 2005
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

CIVIL ACTION
FILE NUMBER: 2004CV94553

Defendant.

COMES NOW, TONY L. WARE, CEO, Plaintiff proceeding by his
 eys in the above-styled civil action matter and hereby files his Notice of Appeal
 ant to **O.C.G.A. § 5-6-34(b)** which the Plaintiff hereby appeals to the Georgia
 me Court from final judgment entered on January 28th, 2005 and any other
 as it relates to the final judgment in this civil action.

Therefore, the Clerk of this court shall please omit nothing in the record pertaining to Plaintiff's appeal. Furthermore, Appellant states that there are no transcripts of evidence of the proceedings to be filed for the inclusion of the record on Plaintiff's appeal.

You are required to prepare transmit the entire record on Plaintiff's appeal to the Georgia Supreme Court within (20) days from the date of filing this notice of appeal. The Georgia Supreme Court has jurisdiction of this appeal rather than Georgia Court of Appeal as it involves an action concerning an injunction and equitable relief and some errors of law pursuant to **O.C.G.A. § 5-6-34(a)**. A copy of said final judgment is attached hereto as **Exhibit "A"**.

This 8th, day of Feb, 2005.

1 **Respectfully Submitted,**

2 

3 **Dr. Tony L. Ware, Appellant**

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5 **P.O. Box 150524-Dept. 0227**
6 **Atlanta, Georgia 30315-0188**
7 **(404) 945-0342**
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PLAINTIFFS'

EXHIBIT

“H”

PLAINTIFFS'

EXHIBIT

“J”

Secretary of State
Corporations Division
315 West Tower
#2 Martin Luther King, Jr. Dr.
Atlanta, Georgia 30334-1530

DOCKET NUMBER : 050691166
CONTROL NUMBER : J150296
DATE INC/AUTH/FILED: 02/27/1981
JURISDICTION : RHODE ISLAND
PRINT DATE : 03/10/2005
FORM NUMBER : 215

TONY L. WARE
POB 150524
ATLANTA, GA 30315

CERTIFIED COPY

I, Cathy Cox, the Secretary of State of the State of Georgia, do hereby certify under the seal of my office that the attached documents are true and correct copies of documents filed under the name of

FLEET FINANCIAL CORPORATION OF RHODE ISLAND
A FOREIGN PROFIT CORPORATION

Said entity was formed in the jurisdiction set forth above and has filed in the Office of Secretary of State on the date set forth above its certificate of limited partnership, articles of incorporation, articles of association, articles of organization or application for certificate of authority to transact business in Georgia.

This certificate is issued pursuant to Title 14 of the Official Code of Georgia Annotated and is prima-facie evidence of the existence or nonexistence of the facts stated herein.



Cathy Cox
Secretary of State

DUPLICATE

J150296

STATE OF GEORGIA
SECRETARY OF STATE EX-OFFICIO
CORPORATION COMMISSIONER
November 22, 1983

C T CORPORATION SYSTEM
2 Oliver St.
Boston, MA 02109
attn: R. B. Ford

Dear Sir:

The STATEMENT OF WITHDRAWAL of

"FLEET FINANCIAL CORPORATION OF RHODE ISLAND"

together with the filing fee of \$15.00 has been received; and, the Secretary of State having found that the statement complies with the requirements of law, it has this day been filed, and the authority of said corporation to transact business in Georgia is hereby terminated.

Respectfully,



SECRETARY OF STATE, EX-OFFICIO CORPORATION
COMMISSIONER OF THE STATE OF GEORGIA

FILE IN DUPLICATE

TO: Secretary of State
Ex-Officio Corporations Commissioner
State of Georgia

Fee -- \$10.00

APPLICATION AND STATEMENT
OF
WITHDRAWAL

Pursuant to Section 22-1414 or Section 22-3214 of the Georgia Business Corporation Code.

The name of the corporation is

FLEET FINANCIAL CORPORATION

State of incorporation, Rhode Island

The corporation is not transacting business in Georgia and hereby surrenders its authority to transact business in Georgia. It hereby revokes the authority of its registered agent in Georgia to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in the State of Georgia during the time the corporation was authorized to transact business therein may hereafter be made on the corporation by service thereof on the Secretary of State or his Agent.

The address to which the Secretary of State may mail a copy of any process against the corporation that may be served on him is

55	Kennedy Plaza		
(Number)	(Street)		
Providence	Providence	Rhode Island	02903
(Post Office)	(City)	(State)	(Zip)

RECEIVED 1983 NOV 14 10 36 AM SECRETARY OF STATE CORPORATIONS DIVISION

RECEIVED 1983 NOV 22 11 10 AM SECRETARY OF STATE CORPORATIONS DIVISION

The undersigned president (or vice-president) and secretary (or assistant secretary) of the corporation declare under the penalties of perjury that the facts herein stated are true.

FILED AND ACCEPTED FLEET FINANCIAL CORPORATION
(Name of corporation)

by

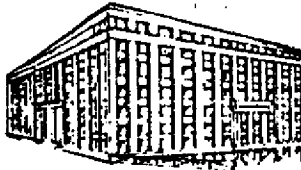
John W. Dence, Jr.
(President)

and attested

Edward W. Dence, Jr.
(Secretary or Assistant Secretary)

Received:

Filed:



MARCUS E. COLLINS

W. E. STRICKLAND
Commissioner

STATE OF GEORGIA

DEPARTMENT OF REVENUE

INCOME TAX DIVISION

TRINITY-WASHINGTON BUILDING

ATLANTA, GEORGIA 30334

October 28, 1983

JOHN G. CARTER
Director

Telephone Number:
(404) 656-4191

Person to Contact:
Doris Langley

TO WHOM IT MAY CONCERN:

Fleet Finance, Inc. Rhode Island Corporation a qualified foreign corporation, has executed and filed with this department an assumption of tax liability on behalf of Fleet Financial Corporation and does guarantee to file all Georgia tax returns required of the above named corporation and pay all taxes accrued and owing to the State of Georgia.

Sincerely yours,

Emily D. Pettit
Section Supervisor
Corporate Operations

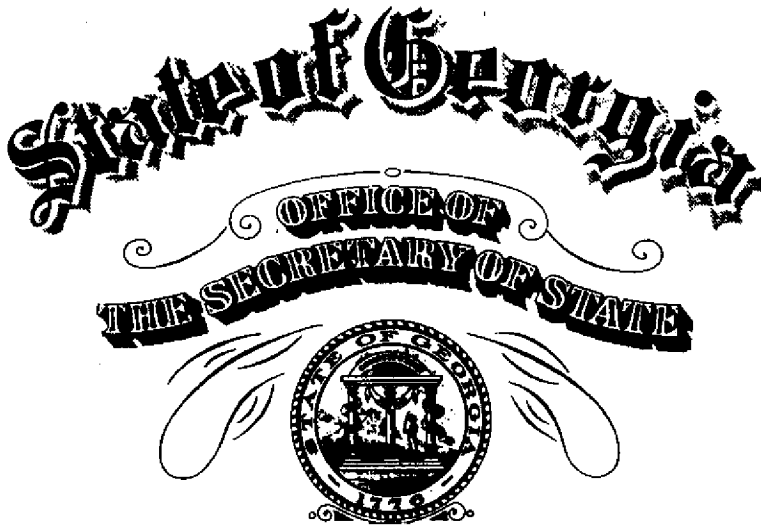
This 28th day of October, 1983

Executed in the presence of

Notary Public, Georgia, State at Large
My Commission Expires May 29, 1986

EDP/d1

DUPLICATE



To all to whom these Presents Shall Come, Greeting:

Whereas, "FLEET FINANCIAL CORPORATION OF RHODE ISLAND"

incorporated under the laws of the State of RHODE ISLAND
has filed in the Office of the Secretary of State duly authenticated evidence of its
incorporation and an application for amended Certificate of Authority to transact
business in this State, as provided by "THE GEORGIA CORPORATION CODE"
of Georgia, in force April 1, A.D. 1969.

Now Therefore, I, **MAX CLELAND**, Secretary of State of the State of
Georgia, by virtue of the powers and duties vested in me by law, do hereby issue this
amended Certificate of Authority and attach thereto a copy of the application of the
aforesaid corporation.

In Testimony Whereof, I have hereunto set my hand and
affixed the seal of my office, at the Capitol, in the City of Atlanta, this
24th day of October in the year of our Lord one
Thousand Nine Hundred and Eighty Three and of
the Independence of the United States of America the Two
Hundred and Eight.

Max Cleland

SECRETARY OF STATE, EX-OFFICIO CORPORATION
COMMISSIONER OF THE STATE OF GEORGIA

FILE IN DUPLICATE

Filing Fee — \$20.00

**APPLICATION FOR
AMENDED CERTIFICATE OF AUTHORITY
OF**

Fleet Financial Corporation
.....
A Corporation Of: Rhode Island.....

TO: Secretary of State
Ex-Officio Corporations Commissioner
State of Georgia

Pursuant to the provisions of Section 22-1413 or Section 22-3213 of the Georgia Business Corporation Code, the undersigned corporation hereby applies for an Amended Certificate of Authority to transact business in your State, and for that purpose submits the following statement:

I. A Certificate of Authority was issued to the corporation by your office on Feb. 27, 1981, authorizing it to transact business in your State under the name of Industrial Financial Corporation.....

II. The corporate name of the corporation has been changed in its jurisdiction of incorporation to.....

Fleet Financial Corporation..... (Note 1).

III. The name which it elects to use hereafter in your State is Fleet Financial Corporation Of Rhode Island

IV. The corporation is authorized to do such other or additional business in its jurisdiction than those set forth in its prior application for Certificate of Authority as follows:

No change.....

.....

.....

.....

..... (Note 2).

Dated: August 15, 1983.....

FILED AND ACCEPTED

In the office of
SECRETARY OF STATE
Atlanta, Georgia on

OCT 24 1983

By John W. Flynn
Its President or Vice President

Or
Its Secretary or Assistant Secretary

SECRETARY OF STATE

Date: 10 Notes: 1. If the corporate name has not been changed, insert "NO Change".

2. If no other or additional purposes are proposed, insert "NO Change".

3. Furnish with application one copy of amendment with \$10.00 in addition to application fee.

OCT 24 1983



State of Rhode Island and Providence Plantations
OFFICE OF THE SECRETARY OF STATE
STATE HOUSE
PROVIDENCE
02903

Susan L. Farmer
Secretary of State

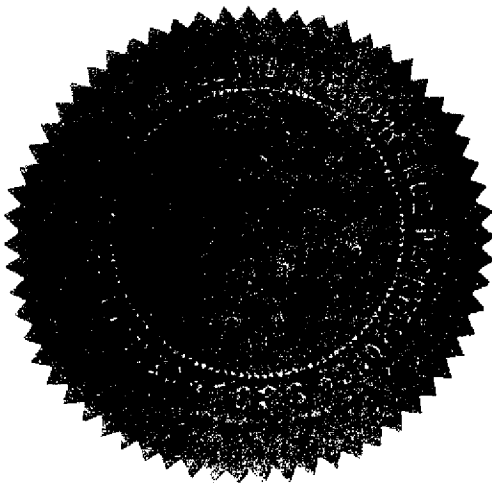
Date July 21, 1983

Fleet Financial Corporation

Document

A TRUE COPY WITNESSED UNDER THE SEAL OF THE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.

Susan L. Farmer
Secretary of State



By Elizabeth R. Froese
Deputy Secretary of State



STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS
Office of the Secretary of State

Edward S. Inman, III, Secretary of State
Corporations Division
100 North Main Street, Providence, RI 02903-1335
401.222.3040

PROFIT CORPORATION ANNUAL REPORT FOR THE YEAR 2003

Filing Period: January 1 - March 1 • Filing Fee: \$50.00

(FORM MUST BE TYPED IN BLACK)

1. Corporate ID No. 6486 2. Name of Corporation FleetBoston Financial Corporation
3. Street Address Principal Business Office 100 Federal Street City Boston State MA Zip 02110
4. Business Phone No. (617) 292-2000 5. State of Incorporation Rhode Island 6. SIC Code 0000
7. Brief Description of the Character of Business Conducted in Rhode Island Holding Company

8. NAMES AND ADDRESSES OF THE OFFICERS ("X" BOX FOR ATTACHMENT) ☒ FILL IN SPACES BEFORE USING ATTACHMENTS

President Name Eugene McQuade Street Address 100 Federal Street City Boston State MA Zip 02110	Vice President Name Gary A. Spiess Street Address 100 Federal Street City Boston State MA Zip 02110
Secretary Name Gary A. Spiess Street Address 100 Federal Street City Boston State MA Zip 02110	Treasurer Name Douglas L. Jacobs Street Address 100 Federal Street City Boston State MA Zip 02110

9. NAMES AND ADDRESSES OF THE DIRECTORS ("X" BOX FOR ATTACHMENT) ☒ FILL IN SPACES BEFORE USING ATTACHMENTS

Director Name Joel B. Alvord Street Address 75 Federal Street City Boston State MA Zip 02110	Director Name Daniel P. Burnham Street Address c/o Raytheon Co., 141 Spring Street City Lexington State MA Zip 02421
Director Name William Barnet, III Street Address 507 E. John Street City Spartanburg State SC Zip 29302	Director Name Paul J. Choquette, Jr. Street Address c/o Gilbane Building Co., 7 Jackson Walkway City Providence State RI Zip 02903

10. SHARES AUTHORIZED ("X" BOX FOR ATTACHMENT) ☐

Number of Shares	Class/Series	Par Value
2,000,000,000	COMM	\$0.01 PAR VALUE
16,000,000	PREF	\$1.00 PAR VALUE

11. SHARES ISSUED ("X" BOX FOR ATTACHMENT) ☒

Number of Shares	Class/Series	Par Value
See Attachment		

This report must be signed in ink by either the President, Vice President, Secretary, Assistant Secretary, Treasurer, Receiver or Trustee



File Date 2/12/03
Check No 2512509
By DA
FOR SECRETARY OF STATE USE ONLY

Under penalty of perjury, I declare and affirm that I have examined this report, including any accompanying schedules and statements, and that all statements contained herein are true and correct.

Signature of Officer Gary A. Spiess Date 02-04-03
Print or Type Name of Officer
Secretary
Title of Officer